

Senate File 2196 - Introduced

SENATE FILE 2196

BY ZAUN

A BILL FOR

1 An Act relating to the creation of a transfer on death
2 designation affidavit, and providing penalties, and
3 including applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 331.602, Code 2011, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 4. Record a transfer on death designation
4 affidavit created pursuant to section 565C.1 and presented to
5 the recorder's office for recording in the same manner as deeds
6 are recorded. The recorder shall collect a fee for recording
7 the affidavit in the same amount as the fee for recording deeds
8 and shall index the affidavit in the name of the owner of
9 record of the real property or interest in the real property
10 who executed the affidavit.

11 Sec. 2. NEW SECTION. 565C.1 **Transfer on death designation**
12 **affidavit.**

13 1. *a.* Any individual who owns real property or any
14 interest in real property as a sole owner, tenant in common,
15 or surviving joint tenant, or together with the individual's
16 spouse owns an indivisible interest in real property as tenants
17 by the entireties, may designate the entire interest, or any
18 specified part that is less than the entire interest, in
19 such real property as transferable on death to a designated
20 beneficiary or beneficiaries by executing, together with the
21 individual's spouse, if any, a transfer on death designation
22 affidavit pursuant to this section.

23 *b.* If the affidavit is executed by an individual together
24 with the individual's spouse, if any, the dower rights of the
25 spouse are subordinate to the vesting of title to the interest
26 in the real property in the transfer on death beneficiary or
27 beneficiaries designated under this section.

28 *c.* The affidavit shall be recorded in the office of the
29 county recorder in the county in which the real property is
30 located, and, when recorded, the affidavit or a certified copy
31 of the affidavit shall be evidence of the transfer on death to
32 the beneficiary or beneficiaries so designated in the affidavit
33 insofar as the affidavit affects title to the real property.

34 2. *a.* If an individual who owns real property or an
35 interest in real property as a sole owner or as a tenant in

1 common executes a transfer on death designation affidavit,
2 upon the death of the individual, title to the real property
3 or interest in the real property specified in the affidavit
4 vests in the transfer on death beneficiary or beneficiaries
5 designated in the affidavit.

6 *b.* If an individual who owns real property or an interest
7 in real property as a surviving joint tenant executes a
8 transfer on death designation affidavit, upon the death of
9 the individual or of one but not all of the surviving joint
10 tenants, title to the real property or interest in the real
11 property specified in the affidavit vests in the surviving
12 joint tenant or tenants. Upon the death of the last surviving
13 joint tenant, title to the real property or interest in the
14 real property vests in the transfer on death beneficiary or
15 beneficiaries designated in the affidavit, subject to section
16 565C.2.

17 *c.* If an individual who together with the individual's
18 spouse owns an indivisible interest in real property as tenants
19 by the entirety executes a transfer on death designation
20 affidavit, upon the death of the individual, title to the
21 real property or interest in the real property vests in the
22 remaining tenant by the entirety. Upon the death of the
23 remaining tenant by the entirety, title to the real property
24 or interest in the real property vests in the transfer on death
25 beneficiary or beneficiaries designated in the affidavit,
26 subject to section 565C.2.

27 3. A transfer on death designation affidavit shall be
28 verified before any person authorized to administer oaths and
29 shall include all of the following:

30 *a.* A description of the real property affected by the
31 affidavit and a reference to an instrument of record containing
32 that description.

33 *b.* If less than the entire interest in the real property
34 is to be transferred on death under the affidavit, a statement
35 of the specific interest or part of the interest in the real

1 property that is to be so transferred.

2 *c.* A statement by the individual executing the affidavit
3 that the individual is the person appearing on the instrument
4 of record of the real property as the owner of the real
5 property or interest in the real property at the time of
6 the recording of the affidavit and the marital status of the
7 owner. If the owner is married, the affidavit shall include a
8 statement by the owner's spouse stating that the spouse's dower
9 rights are subordinate to the vesting of title to the real
10 property or interest in the real property in the transfer on
11 death beneficiary or beneficiaries designated in the affidavit.

12 *d.* A statement designating one or more persons, identified
13 by name, as the transfer on death beneficiary or beneficiaries.

14 4. The county recorder of the county in which a transfer
15 on death designation affidavit is offered for recording shall
16 receive the affidavit and record it in the same manner as
17 deeds are recorded. The county recorder shall collect a fee
18 for recording the affidavit in the same amount as the fee for
19 recording deeds. The county recorder shall index the affidavit
20 in the name of the owner of record of the real property or
21 interest in the real property who executed the affidavit.

22 5. A transfer on death designation affidavit need not
23 require consideration and need not be delivered to the transfer
24 on death beneficiary or beneficiaries designated in the
25 affidavit to be effective. However, in order to be effective,
26 such affidavit shall be recorded with the county recorder prior
27 to the death of the individual who executed the affidavit.

28 6. Upon the death of any individual who owns real property
29 or an interest in real property that is subject to a transfer
30 on death beneficiary designation made under a transfer on death
31 designation affidavit as provided in this section, the real
32 property or interest in real property of the deceased owner
33 shall be transferred only to the transfer on death beneficiary
34 or beneficiaries who are identified in the affidavit by name
35 and who survive the deceased owner or who are in existence on

1 the date of death of the deceased owner.

2 7. Any person who knowingly makes a false statement in a
3 transfer on death designation affidavit is guilty of a serious
4 misdemeanor.

5 8. The attorney general shall prescribe forms and adopt
6 rules pursuant to chapter 17A as necessary to administer this
7 section.

8 Sec. 3. NEW SECTION. **565C.2 Designating transfer on death**
9 **beneficiary.**

10 1. A transfer on death beneficiary takes only the interest
11 that a deceased owner of the interest held on the date
12 of death, subject to all encumbrances, reservations, and
13 exceptions.

14 2. If two or more owners hold title to the interest in
15 a surviving joint tenancy, the death of all except the last
16 surviving joint tenant automatically terminates and nullifies
17 any transfer on death beneficiary designations made solely
18 by the deceased surviving joint tenant or tenants without
19 joinder by the last surviving joint tenant. The termination or
20 nullification of any transfer on death beneficiary designations
21 under this section is effective as of the date of death of
22 a deceased surviving joint tenant. No affirmative act of
23 revocation is required of the last surviving joint tenant
24 for the termination or nullification of the transfer on
25 death beneficiary designations to occur as described in this
26 subsection. If the last surviving joint tenant dies without a
27 transfer on death beneficiary designation, the entire interest
28 of that last surviving joint tenant shall be distributed as
29 part of that tenant's probate estate.

30 3. If owners hold title to the interest in a tenancy by the
31 entirety, the death of the first tenant by the entirety
32 automatically terminates and nullifies any transfer on
33 death beneficiary designations made solely by that deceased
34 first tenant without joinder by the remaining tenant by the
35 entirety. The termination or nullification of any transfer

1 on death beneficiary designations under this subsection is
2 effective as of the date of death of the first tenant by the
3 entireties. No affirmative act of revocation is required of
4 the remaining tenant by the entireties for the termination or
5 nullification of the transfer on death beneficiary designations
6 to occur as described in this subsection. If the remaining
7 tenant by the entireties dies without a transfer on death
8 beneficiary designation, the entire interest of that remaining
9 tenant shall be distributed as part of that tenant's probate
10 estate.

11 Sec. 4. APPLICABILITY.

12 1. This Act does not affect any deed executed and recorded
13 prior to the effective date of this Act.

14 2. This Act applies to a transfer on death designation
15 affidavit recorded on or after the effective date of this Act.

16 EXPLANATION

17 TRANSFER ON DEATH DESIGNATION AFFIDAVIT. The bill creates
18 a transfer on death designation affidavit and provides that
19 any individual who owns real property or any interest in real
20 property as a sole owner, tenant in common, or surviving joint
21 tenant, or along with the individual's spouse, as a tenant
22 by the entireties, may designate the entire interest, or any
23 specified part that is less than the entire interest, in
24 that real property as transferable on death to a designated
25 beneficiary or beneficiaries by executing, together with the
26 individual's spouse, if any, a transfer on death designation
27 affidavit. If the affidavit is executed by an individual
28 together with the individual's spouse, if any, the dower
29 rights of the spouse are subordinate to the vesting of title
30 to the interest in the real property in the transfer on death
31 beneficiary or beneficiaries designated in the affidavit.

32 TRANSFER — TYPES OF PROPERTY INTERESTS.

33 SOLE OWNER — TENANT IN COMMON. If an individual who
34 owns real property or an interest in real property as a sole
35 owner or as a tenant in common executes a transfer on death

1 designation affidavit, upon the death of that individual, title
2 to the real property or interest in the real property specified
3 in the affidavit vests in the transfer on death beneficiary or
4 beneficiaries designated in the affidavit.

5 SURVIVING JOINT TENANT. If an individual who owns real
6 property or an interest in real property as a surviving joint
7 tenant executes a transfer on death designation affidavit,
8 upon the death of that individual or of one but not all of the
9 surviving joint tenants, title to the real property or interest
10 in the real property specified in the affidavit vests in the
11 surviving joint tenant or tenants. Upon the death of the last
12 surviving joint tenant, title to the real property or interest
13 in the real property vests in the transfer on death beneficiary
14 or beneficiaries designated in the affidavit, subject to the
15 interest that the deceased owner or owners of the interest
16 held on the date of death, and subject to all encumbrances,
17 reservations, and exceptions.

18 TENANTS BY THE ENTIRETIES. If an individual who together
19 with the individual's spouse owns an indivisible interest
20 in real property as tenants by the entireties executes a
21 transfer on death designation affidavit, upon the death of that
22 individual, title to the real property or interest in the real
23 property vests in the remaining tenant by the entireties. Upon
24 the death of the remaining tenant by the entireties, title to
25 the real property or interest in the real property vests in
26 the transfer on death beneficiary or beneficiaries designated
27 in the affidavit, subject to the interest that the deceased
28 owner or owners of the interest held on the date of death, and
29 subject to all encumbrances, reservations, and exceptions.

30 AFFIDAVIT INFORMATION. A transfer on death designation
31 affidavit shall be verified before any person authorized
32 to administer oaths and shall include certain information
33 including a description of the real property affected and
34 a reference to an instrument of record containing that
35 description, a statement of the specific interest or part of

1 the interest in the real property that is to be transferred,
2 a statement by the individual executing the affidavit that
3 the individual is the person appearing on the instrument of
4 record of the real property as the owner of the real property
5 or interest in the real property at the time of the recording
6 of the affidavit and the marital status of that owner and a
7 statement by the owner's spouse, if applicable, stating that
8 the spouse's dower rights are subordinate to the vesting of
9 title to the real property or interest in the real property in
10 the transfer on death beneficiary or beneficiaries designated
11 in the affidavit, and a statement designating the name of
12 one or more persons as transfer on death beneficiary or
13 beneficiaries.

14 RECORDING — COUNTY RECORDER. The county recorder of the
15 county in which a transfer on death designation affidavit is
16 offered for recording shall receive the affidavit and record
17 the affidavit in the same manner as deeds are recorded. The
18 county recorder shall collect a fee for recording the affidavit
19 in the same amount as the fee for recording deeds and shall
20 index the affidavit in the name of the owner of record of the
21 real property or interest in the real property who executed
22 the affidavit. The affidavit is required to be recorded with
23 the county recorder prior to the death of the individual who
24 executed the affidavit. The bill makes a conforming change
25 to Code section 331.602 relating to the duties of a county
26 recorder.

27 BENEFCIARY IDENTIFICATION. Upon the death of any
28 individual who owns real property or an interest in real
29 property that is subject to a transfer on death beneficiary
30 designation made under a transfer on death designation
31 affidavit, the real property or interest in real property of
32 the deceased owner can only be transferred to the transfer on
33 death beneficiary or beneficiaries who are identified in the
34 affidavit by name and who survive the deceased owner or who are
35 in existence on the date of death of the deceased owner.

1 FALSE STATEMENT — PENALTY. A person who knowingly makes a
2 false statement in a transfer on death designation affidavit is
3 guilty of a serious misdemeanor.

4 RULES. The attorney general is required to prescribe forms
5 and adopt rules pursuant to Code chapter 17A to administer the
6 requirements of the bill.

7 APPLICABILITY. The bill does not affect any deed executed
8 and recorded prior to the effective date of the bill and
9 applies to a transfer on death designation affidavit recorded
10 on or after the effective date of the bill.